

1895-028 Chancery Causes: M. C. Ely vs. J. F. Howard + wife &c
Lee Co.

J. W. Howard + Co }

-Debt

CA-Debt
T-Property

Virginia Lee County to wit:

J. A. B. Munsey Clerk of Lee County Circuit Court do certify That M. H. Ely atty and Plaintiff in a certain Chancery Cause pending in the Lee County Circuit Court against J. F. Howard, Ed J. M. Howard and Cland. Howard. partners doing business as J. M. Howard & Co. and Rebecca W. Howard wife of J. F. Howard defendants made oath before me in my office that he believe that said J. F. Howard is justly indebted to him in the sum of \$75⁰⁰ with interest thereon from the 6th day of August, 1894, till paid, and that ^{he} said Plaintiff has caused of action upon said debt; and that said affiant believes that said debt is just, due and unpaid, and that said affiant ^{believes} that said J. F. Howard has fraudulently assigned a certain stock of goods, wares and Merchandise and soda fountain at Chinger in Lee County Virginia in a store house known as the T. B. Thompson house to the said J. M. Howard and Cland Howard, Merchants and partners as aforesaid, with intent to hinder and delay or defraud his creditors, and that the said assignees are aiding in said fraud; and that said affiant further believes that J. F. Howard has fraudulently conveyed or certain lot or parcel of land

lying in the town of Olinger, Lee
County, Va to his wife Rebecca W. Howard
for the purpose ~~of~~ and with the intent to
hinder, delay and defraud his
Creditors; and that said Affiant
believes that said J. F. Howard has
converted the aforesaid stocks of
goods, wares and Merchandise
and fixtures into Money,
Securities or evidences of debt
with intent to hinder, delay and
defraud his Creditors; and that J.
Howard, Rebecca W. Howard and said Howard
are non-residents of Va
under their hand the 23rd
day of August, 1894.

A. B. Munsey Clerk

M. H. Ely, Atty
vs } Affidavit
J. F. Howard et al

Mr. Ely & Opp
Attys.

To the Hon W. T. Miller, Judge of the Circuit Court of Lee County, Va.

Your orator, M. H. Ely, Attorney, humbly complaining, sheweth unto your honor, that J. F. Howard executed to your orator a promissory note on the 8th day of May 1894, due ninety days after date for the sum of \$75⁰⁰; that the said note is now due and payable and unpaid; ~~that~~ the said J. F. Howard is a non-resident of the State of Virginia; that J. F. Howard has assigned to J. W. Howard and Elaud Howard, Merchants and partners doing business under the firm name of J. W. Howard & Co, a stock of goods, wares and Merchandise, and a soda fountain, at Chigex, Lee County, Va with intent to hinder, delay and defraud his Creditors; that the said J. W. Howard and Elaud Howard Merchants and partners doing business under the firm name of J. W. Howard & Co have colluded with the said J. F. Howard for the purpose of aiding him to Cheat, defraud, and hinder the Creditors of said J. F. Howard in the collection of their debts; that J. W. Howard & Co have not paid a valuable con-

redemption for said goods or for any part of them; that the said J. F. Howard conveyed to his wife Rebecca W. Howard a certain lot in the town of Olin, Va on the day of 1894, without valuable consideration and with the intent of defrauding and delaying his creditors in the collection of their debts; that the said Rebecca W. Howard accepted said fraudulent deed with the sole purpose of aiding her said husband to defraud his creditors. Said deed is here filed marked "A" & the note mentioned in this bill is here filed marked "B."

Your orator now represents that J. F. Howard has no other property in this county or in this State as he verily believes out of which he can make his debt; that J. F. Howard, Rebecca W. Howard and Claude Howard are now residents of Virginia;

The premises considered and your orator being without remedy at law he prays that J. F. Howard, Rebecca W.

Howard J. W. Howard and Iland
~~mychauts & partners~~ ^{under the firm name of J. W. Howard & Co}
Howard, be made parties defendant to
this bill and that they be required to
answer the same but not upon oath
that being waived; that the said J. W.
Howard and Iland Howard, merchants and
partners doing business under the firm
name of J. W. Howard & Co be enjoined from
selling & disposing of said goods and
that a receiver be appointed to take charge
of said stock of goods and that he
dispose of the same as the Court may
direct; that the said due to Rebecca
W. Howard be set aside and that said
lot be subjected to the payment of
your orators said debt; that said
assignment to J. W. Howard & Co be
cancelled; that proper process of
attachment issue against said goods
^{that general relief be granted}
and lot; that the Commonwealth's
writ of Habeas Corpus be directed &c,
and as in duty bound your
orator will ever pray.

J. W. Ely & J. W. W.
Sols

Virginia, Lee County, to-wit:

J. A. B. Munsey Clerk of the Circuit
Court of Lee County, Va do Certify

M. H. Ely, Attorney

vs } Bill in Chy

C \$6.37
S .37
Atty 15.00
\$21.87
Estimate 5.00
\$26.87
Printer 6.00
\$32.87

J. F. Howard et al
1894 1st September Rules
of the Court of Publications
as to J. F. Howard

" 2nd September Rules
Court for and Pub
to complete

" 1st October Rules and
Pub completed and
Spa executed on J. F.
Howard and Decree nisi

2nd October Rules D. N.
Confirmed and Cause
Set for hearing by Pff

1894 Nov Term Decree
Continued.

1895 March Term Decree
Final See Cheyford
Book Page 165-

Orr, Ely & Orr,
Attys.

That M. H. Ely appeared before me in
my office and made oath that the
Matters and things in the foregoing
bill are true. This the 29th day
of August 1894.
A. B. Munroe Clerk

M. G. Ely

vs.



Decree Final

J. H. Howard et al

This cause came on this day to be heard upon the papers formerly read in the cause and the report of sale by Commissioner L. M. Wade and was argued by counsel and it appearing that said report had been filed for more than ten days before the beginning of this term and is still unexcepted to, it is therefore ordered and decreed that said report be confirmed, and nothing further remaining to be done the cause is stricken from the docket.

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M. G. Ely
Wm. E. Deere
J. H. Howard et al

O. B.
Page 165

Enter this

M. J. M.

March 11th 1895

M. H. Ely

vs

J. F. Howard et al

J. F. Howard et al

This Cause came on this day to be heard upon the bill and Sp in Chy duly executed on the defendant John F. Howard, and Order of Publication duly made, posted, published and completed against the now resident defendants and the attachment lying on the personal property and real estate shown by return. On Consideration whereof the Court is of opinion that the levy is sufficient as to said personal property but insufficient as to said real estate because service was not made on the tenant in possession as the statute directs. And the Court being further of the opinion that the claim of the plaintiff is established it is therefore considered by the Court that the plaintiff recover of the defendant J. F. Howard the sum of \$75⁰⁰ with interest from the 6th day of August, 1894, till paid and the costs of this suit. And the plaintiff M. H. Ely with C. W. Burroughs having executed bond in the penalty of \$150 - Conditioned

as the Statute directs which is hereby
approved it is further adjudged
ordered and decreed that D. M.
Mads who is hereby appointed a
Special Commissioner for the purpose
do proceed to sell at public out
cry to the highest bidder at the
town of Olmsted, for cash in hand,
the said attached personal property,
or so much thereof as may
be sufficient to pay the debt,
interest and costs aforesaid.
But before doing so he will
execute bond before the Clerk
of this Court in the penalty of
\$150⁰⁰ conditioned according
to law. And he will advertise the
time, place and terms of sale
for at least 30 days prior
thereto by posting written notices
thereof at some public place
in the town of Olmsted and
at the front door of the Court-
house of this County, he will
report his action to the next
term of this Court and this
Cause is continued.

M. A. Ely
vs J. S. Suen

J. F. Howard et al
Entered in
Clerk C. B.
Page 106

Enter

M. L. M.

11/16/94

Mr. G. Ely, Atty } In Chy
vs
J. F. Howard et al }

Virginia, Lee County, to-wit:

J. A. B. Mursey Clerk of the Circuit
Court of Lee County, Va, do certify
that Wm. A. Orr, Es appeared before
me in my Office and made
oath that in his opinion it is
to the best interest of all persons
in this suit to have a referee
of appointed in the cause, and
that Henry H. Pearson is a suitable
person for such appointment.
This Aug- 30-1894.
A. B. Mursey Clerk

Mr. A. Cely atty
vs } Affidavit for
Reimbursement
J. F. Howard et al

M. A. Ely

vs

J. L. Chanany

J. F. Howard et al

To the Hon W. P. Miller, Judge of the Circuit Court
of Lee County, Va.

Your undersigned, ^{Special} Commissioner in the above
styled Cause, appointed at the last term of this
Court, begs leave to report, that pursuant to
said decree he did on the 29th day of
December, 1894, proceed to sell the attached
property to the highest and best bidder,
after having duly advertised the time, terms
and place of sale for 30 days previous
thereto. He sold said property at the town
of Olinger, Va, to M. A. Ely, the plaintiff
in this suit, at the price \$42⁹⁸, he
being the highest and best bidder.
The purchaser paid your Commissioner
his costs, and the purchaser being the
plaintiff and owner of the decree or
judgment for which the property was
sold to satisfy no further cash was
received from him.

Respectfully Submitted,

L. M. Wade

Special Commissioner

M. H. Ely

vs Gleason's Report of Sale

J. F. Howard

Filed Feb'y the 19th
1895

A. B. Muncy
Clerk

This Deed, made this 14th. day of June in the year 1897, between
M.G.Ely and Etta Ely his wife of Lee County Virginia
parties of the

part of the first part, and
of the part
of the second part, WITNESSETH:—That said part of the first part, do grant unto the said
part of the second part, the following property, to-wit:

In Trust, to secure to the holder of the hereinafter described
the payment of the sum of

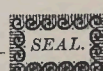
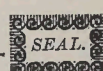
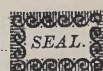
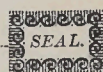
IN THE EVENT THAT DEFAULT SHALL BE MADE in the payment of the above mentioned
as become due and payable, then the trustees, or either of them, on being required so to do by
executors, administrators or assigns, shall sell the
property hereby conveyed.

And it is covenanted and agreed between the parties aforesaid that, in case of a sale, the same shall be made after first advertising the time, place and terms thereof for _____

and upon the following terms, to-wit: For cash as to so much of the proceeds as may be necessary to defray the expenses of executing this trust, including a trustee's commission of five per centum, the fees for drawing and recording this deed, if then unpaid, and to discharge the amount of money then payable upon the said _____, and if at the time of such sale any of the said _____ shall not have become due and payable, and the purchase money be sufficient, such part or parts of the said purchase money as will be sufficient to pay off and discharge such remaining _____, shall be made payable at such time or times as the said remaining _____ will become due; the payment of which part or parts shall be properly secured; and in case the net proceeds of sale shall be insufficient to pay off all of the said _____ in full, then the same shall be applied towards the payment of the said _____ in the order of their maturity, it being intended hereby to create a priority in favor of each of said _____ over any other _____ which may become due and payable subsequent thereto; and if there be any residue of said purchase money, the same shall be made payable at such time and secured in such manner as the said part _____ of the first part _____ executors, administrators or assigns shall prescribe and direct, or in case of _____ failure to give such direction, at such time and in such manner as the said Trustees or either of them shall think fit. The said part _____ of the first part covenant to pay all taxes, assessments, dues and charges upon the said property hereby conveyed so long as _____ or _____ heirs or assigns shall hold the same; and further covenant and agree to keep the buildings on the property hereby conveyed insured for the full amount of \$ _____ for the further protection of the said _____ or assigns, and in the event of _____ failure to do so, then the trustees, or either of them, or the beneficiary under this deed, may effect or renew such insurance from time to time, so long as the said debt, or any part thereof, remains unpaid; and the insurance premiums shall constitute a part of the lien created by this deed, to be paid out of the proceeds of the property, if sold, or to be recoverable by all the remedies in law or equity by which the debt aforesaid may be recoverable.

If NO DEFAULT SHALL BE MADE in the payment of either of the above-mentioned _____ or insurance premiums, then, upon the request of the part _____ of the first part, a good and sufficient deed of release shall be executed to _____ at _____ own proper costs and charges.

Witness the following signature and seal:



State of Virginia,

_____ of _____ to-wit: _____
I, _____
_____ for the _____ aforesaid, in the State of Virginia, do certify that
_____ whose name _____ signed to the foregoing writing, bearing date on the _____ day of _____ 189 _____, has acknowledged the same before me in my _____ aforesaid.

Given under my hand this _____ day of _____ 189 _____

MEMO.—To be acknowledged before any officer authorized to take acknowledgments.

_____ to-wit: _____
In the Office of the Clerk of the _____ Court for the _____ of _____
the _____ day of _____ 189 _____, this deed was presented and, with the certificate annexed, admitted to record at _____ o'clock _____ M.
Teste: _____ Clerk.

to

{ DEED OF
TRUST.

Trustee for.....

Court of.....

Recorded, Deed Book.....

Page..... and.....

189.....

Presented in office and, with Certificate, ad-
mitted to record at.....o'clock.....M.

Clerk.

Tax, - - - - - \$.....

Fee, - - - - -

Know all Men by these Presents, That we

*W. A. Ely and
E. W. Pennington*

are held and firmly bound unto the Commonwealth of Virginia, in the sum of *One hundred & fifty* dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. And we hereby waive the benefit of our homestead exemptions as to this obligation, and any claim or right to discharge any liability to the Commonwealth arising under this bond or by virtue of said office, post or trust, with coupons detached from the bond of this State. Sealed with our seals, and dated this *16th* day of *November* one thousand eight hundred and ninety *four*

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas

W. A. Ely has sued out a foreign attachment against the real and personal estate of J. H. Howard and whereas the said attachment has been levied by one of the Deputies of C. C. Flannery, Sheriff of Lee County, Va. in the suit in Chy of said Ely vs said Howard and others do pending in the Circuit Court of Lee County, Now if the said Ely saves harmless the said Howard and abides & performs the future order or orders of said Court-

then this obligation to be void or otherwise to remain in full force and virtue.

W. A. Ely

[SEAL.]

E. W. Pennington

[SEAL.]

[SEAL.]

In the Circuit Court of the County of Lee, the *16th* day of *November* 189*4*

This bond was executed and acknowledged, in open Court, by the obligors, and ordered to be recorded, *E. W. Pennington*

the surety therein having first justified on oath that *his* estate, after the payment of all just debts, and those for which he *is* bound as security for others and expect to have to pay, *is* worth the sum of *One hundred & fifty* dollars, over and above all exemptions allowed by law.

Teste:

A. B. Munsey

Clerk.

M. G. Ely et al -

to {

BOND.

Commonwealth.

Virginia

In the Clerk's Office of the Circuit Court of the County of

Lee

M. G. Ely,

against

Plaintiff

Lee Ely,

J. H. Howard, Rebecca M. Howard, John W.

Howard and Bland Howard

Defendant

Merchants & partners doing business under the firm name of J. W. Howard & Co

This day

M. G. Ely

personally appeared

before me,

A. B. Mursey

Clerk of the said Court,

and being duly sworn, made oath that

J. H. Howard, Rebecca M. Howard

and Bland Howard

defendants in the said suit are not resident of the State of Virginia,

Given under my hand as Clerk of the said Court, this 29th day of August,

1894.

A. B. Mursey Clerk

M G Ely

vs.

{ AFFIDAVIT FOR ORDER
OF
PUBLICATION.

J. F. Howard et al

Orr, Ely & Orr p. q.

In the Clerk's Office of the Circuit Court of the County of
Lee on the 27th day of August 1894.

against

M. G. Celis

Plaintiff

In Chancery

J. F. Howard

Defendant

The object of this suit is to Set aside a fraudulent assignment made by J. F. Howard to G. F. Howard & Co and to Cancel a deed made by J. F. Howard to Rebecca Howard his wife and to ~~and~~ to attach said property & to obtain a decree for 17500. And an affidavit having been made and filed that the defendant J. F. Howard, Rebecca Howard and Ieland Howard are not residents of the State of Virginia, it is ordered that they do appear here, within Fifteen days after due publication hereof, and do what may be necessary to protect their interest in this suit. And it is further ordered that a copy hereof be published once a week for four weeks in the South West Virginia, and that a copy be posted at the front door of the court-house of this County on the first day of the next term of the County Court.

A copy—Teste:

Or. Ely, & Or.

p. q.

A. B. Munsey Clerk.

M & Ely

vs.

ORDER OF
PUBLICATION.

J F Howard et al

I A B Munsey Clerk
of the Circuit Court for
Lee County do Certify
that I delivered a copy of
the within order of Pub-
lication to W F Eads Ed-
itor of the South west
Virginian on the 27th
day of August 1894 for
publication; and that I
posted a copy of the same
at the front door of the Court
house of Lee County as
the Law directs
Given under my hand
this 16th of October 1894
A B Munsey Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee---Greeting:

WE COMMAND YOU, That you summon

*J F Howard and Rebecca
W Howard his wife and J W Howard and
Cland Howard Merchants & partners doing
business under the firm name of J W Howard & Co*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said

Court on the *1st* Monday in *October*, 189*4*, to answer a bill in Chancery,

exhibited against *Them* in our said court by *M. G Ely*

And have then there this writ. Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the

29th day of *August*, 189*4*, and in the 11*9th* year of the

Commonwealth.

A B Munsey Clerk.

By virtue of the within
attachment I levied the
same on the 11th day of Sept
1894 on the following goods
and chattels of the defendant
J. F. Howard found in the
possession of J. W. Howard & Co
at the store house occupied
by them at Clinger Va to wit
80 gal. buckets of paint
and 2 y steel plows and
one soda fountain and
fixtures and I also levied
the within attachment
on two lots situated in
Clinger Va lately conveyed
by J. F. Howard to Rebecca Howard
his wife and no attachment
bond having been given by the
plaintiff or anyone for him
I did not take the goods and
chattels of said into my
possession.

L. M. Wade D. S. for
C. E. Filanary
S. L. C.

M G Ely

vs.

SUPREMA
IN CHANCERY.

J. F. Howard et al

Orr Ely + Orr p. q.

To 1st October Rules,
Circuit Court.

Executed Sept
the 11th 1894 by
Delivering a true
office copy of the
within sume to
J. W. Howard at
1 o'clock A.M. J. F.
Howard not found
this Sept-15-1894
L. M. Wade D. S. for
C. E. Filanary
S. L. C.

The officer executing this Sumo will at-
tach the stock of goods now in the store-
house lately owned by I Bent Thompson at
Clinger Lee County Va and now occupied by
J. W. Howard & Co Also one lot lately conveyed by
J. F. Howard to Rebecca Howard situated at
Clinger Va. this the 29th day of August 1894
A B Munsey Clerk

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*J. F. Howard, Rebecca W. Howard, and
J. D. Howard and Claud Howard, merchants and partners doing
business under the firm name of J. D. Howard & Co., and
Leo Jones, Luster, and H. D. Wilson*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said
Court on the 3rd Monday in January, 1898, to answer a bill in Chancery,

exhibited against them in our said court by Rosina Bloom, Executrix of N.
Bloom and P. Bamberger, L. J. Bamberger, E. S. Bamberger, J. W.
Bamberger, Executrix and Executrix of J. F. Bamberger, and Levi Bam-
berger, Julius Bamberger and Levi Bloom, merchants
and partners doing business under the firm
name and style of "Bamberger, Bloom & Co."

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the 18th day of December, 1898, and in the 11th year of
the Commonwealth.

A. B. Munsey Clerk.

Bambergers, Bloom & Co.

US. } SUBPENA
IN CHANCERY.

J. F. Howard et al.
A. A. Ewing }
Ornely & Orr } p. q.

To 2nd Jan'y (1895) Rules,
Circuit Court.

Executed Dec 21/94
by Delivering a true
office copy of the
within Summons to
Claud Howard
H. D. Wilson. &
Lee James Trustee
at 10½ O'clock A.M.
This Dec 22nd 1894
L. M. Wade D. S. for
C. E. Flannery
S. L. C.

The Office executing this Summons will attach the
clothes of goods now in the store house lately owned
by J. B. Thompson at Chicago, Ill. County, D.C., and
now secured by J. B. Howard & Co., also the
sole lately owned by J. B. Howard to Rebecca B.
Howard situated at Chicago, Ill., and
having been executed according to last
order of the Court at Chicago, Ill. and
into the hands of J. B. Howard.

W. J. Munnery Clerk.

CERTIFICATE OF ORDER OF PUBLICATION.

We, A. M. Goins and W. H. Eads,
editors of the SOUTHWEST VIRGINIAN,
a weekly newspaper published at
Jonesville, Lee county, Virginia, do
hereby certify that the annexed no-
tice was published in said paper
once a week for four successive
weeks, commencing on the 6

day of Sept 1894.

A. M. Goins
W. H. Eads } Editors.

Non-Resident Notice.

In the clerk's office of the circuit court of
the county of Lee on the 29th day of Au-
1894.

M. G. Ely, Plaintiff

VS

J. F. Howard, et al Defts

} In Chan'cy.

The object of this suit is to set aside a
fraudulent assignments made by J. F.
Howard to J. W. Howard & Co., and to
cancel a deed made by J. F. Howard to
Rebecca W. Howard his wife, and to at-
tach said property and to obtain a decree
for \$75.00 with interest from the 6th Aug.
1884 till paid against J. F. Howard. And
an affidavit having been made and filed
that the defendants J. F. Howard, Rebecca
W. Howard and Claud Howard are not
a residents of the State of Virginia, it is or-
dered that they do appear here, within fif-
teen days after due publication hereof, and
do what may be necessary to protect their
interest in this suit. And it is further order-
ed that a copy hereof be published once a
week for four weeks in the SOUTHWEST
VIRGINIAN, and that a copy be posted at
the front door of the court house of this
county on the first day of the next term of
the County Court.

A Copy—Teste:

A. B. MUNSEY, Clerk

Orr, Ely & Orr. p. q'

se 6 4t

\$6.00